

REMARKS

The Office Action dated April 13, 2007, has been received and carefully considered. In this response, claims 1 and 8-11 have been amended, claims 12-20 have been added, and claim 7 has been cancelled without prejudice. No new matter has been added. Entry of the amendments to claims 1 and 8-11, the addition of claims 12-20, and the cancellation of claim 7 without prejudice is respectfully requested. Reconsideration of the outstanding objections/rejections in the present application is also respectfully requested based on the following remarks.

I. THE ALLOWABILITY OF CLAIMS 3-6

Applicant notes with appreciation the indication on page 6 of the Office Action that claims 3-6 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. However, Applicants have opted to defer rewriting the above-identified claims in independent form pending consideration of the arguments presented below with respect to the rejected claims.

II. THE INDEFINITENESS REJECTION OF CLAIMS 7 AND 8

On page 2 of the Office Action, claims 7 and 8 were rejected under 35 U.S.C. § 112, second paragraph, as being

indefinite for failing to particularly point out and distinctly claim the invention. This rejection is hereby respectfully traversed.

As stated in MPEP § 2173.04, breadth of a claim is not to be equated with indefiniteness. In re Miller, 441 F.2d 689, 169 USPQ 597 (CCPA 1971). If the scope of the subject matter embraced by the claims is clear, and if applicants have not otherwise indicated that they intend the invention to be of a scope different from that defined in the claims, then the claims comply with 35 U.S.C. 112, second paragraph.

Claim 7 has been cancelled without prejudice. However, claim 8 has been amended to recite "processor readable medium" to address other concerns of the Examiner as discussed below. Thus, claim 8 recites "[a]t least one processor readable medium for storing a computer program of instructions configured to be readable by at least one processor for instructing the at least one processor to execute a computer process for performing the method as recited in claim 1." Clearly, the claim is directed to at least one processor readable medium. Similar to a product-by-process claim, claim 8 relies on the process of claim 1 to define the claimed invention. Such a claim is proper and definite.

In view of the foregoing, it is respectfully requested that the aforementioned indefiniteness rejection of claims 7 and 8 be withdrawn.

III. THE NON-STATUTORY SUBJECT MATTER REJECTION OF CLAIMS 7 & 8

On pages 2-3 of the Office Action, claims 7 and 8 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. This rejection is hereby respectfully traversed.

The Examiner asserts that claim 7 is directed toward a signal and claim 8 is not limited to tangible embodiments. As mentioned above, claim 7 has been cancelled without prejudice and claim 8 has been amended to recite "processor readable medium" to address the concerns of the Examiner.

At this point it should be noted that there is no tangible embodiment requirement on patentable subject matter as long as the claimed invention as a whole accomplishes a practical application. That is, it must produce a "useful, concrete and tangible result." State Street Bank & Trust Co. v. Signature Financial Group Inc., 149 F.3d 1368, 1373, 47 USPQ2d 1596, 1601-02. Furthermore, Applicants direct the Examiner to the case law set forth in In re Beauregard, 35 USPQ 2d 1383, 1384 (Fed. Cir. 1995), In re Lundgren, (B.P.A.I. Case No. 2003-2088 (September

28, 2005)), and others, which clearly provide a patentable subject matter basis for claim 8. Regardless, claim 8 does recite tangible embodiments. For example, claim 8 recites "[a]t least one processor readable medium for storing a computer program of instructions configured to be readable by at least one processor for instructing the at least one processor to execute a computer process for performing the method as recited in claim 1." This contradicts the Examiner's assertion that the claim 8 does not recite a computer program being stored and executable on any readable medium. Thus, claim 8 clearly recites such a tangible embodiment.

Furthermore, Applicants reserve the right to reinstate claim 7 in depending upon the decision reached in In re Petrus A.C.M. Nuijten (U.S. CAFC Appeal No. 06-1371), which addresses the patentability of signals.

In view of the foregoing, it is respectfully requested that the aforementioned non-statutory subject matter rejection of claims 7 and 8 be withdrawn.

IV. THE ANTICIPATION REJECTION OF CLAIMS 1 AND 9-11

On pages 3-5 of the Office Action, claims 1 and 9-11 were rejected under 35 U.S.C. § 102(b) as being anticipated by

Holmberg (U.S. Patent No. 6,247,141). This rejection is hereby respectfully traversed.

Under 35 U.S.C. § 102, the Patent Office bears the burden of presenting at least a prima facie case of anticipation. In re Sun, 31 USPQ2d 1451, 1453 (Fed. Cir. 1993) (unpublished). Anticipation requires that a prior art reference disclose, either expressly or under the principles of inherency, each and every element of the claimed invention. Id. "In addition, the prior art reference must be enabling." Akzo N.V. v. U.S. International Trade Commission, 808 F.2d 1471, 1479, 1 USPQ2d 1241, 1245 (Fed. Cir. 1986), cert. denied, 482 U.S. 909 (1987). That is, the prior art reference must sufficiently describe the claimed invention so as to have placed the public in possession of it. In re Donohue, 766 F.2d 531, 533, 226 USPQ 619, 621 (Fed. Cir. 1985). Such possession is effected only if one of ordinary skill in the art could have combined the disclosure in the prior art reference with his/her own knowledge to make the claimed invention. Id.

Regarding claim 1, the Examiner asserts that Holmberg discloses the claimed invention. However, Applicant respectfully submits that Holmberg fails to disclose, or even suggest, transmitting a checkpoint indication signal simultaneously to a primary element and at least one backup

element, as presently claimed. In contrast, Holmberg discloses that a request is sent from a client to a primary server. The primary server may later communicate this request to a backup server, or the client may later send a message containing the request (as well as a reply from the primary server) to the backup server (e.g., see column 6, lines 3-24). In either case, it is clear that Holmberg fails to disclose, or even suggest, transmitting a checkpoint indication signal simultaneously to a primary element and at least one backup element, as presently claimed. Claim 1 has been amended to make these distinctions more clear. Accordingly, is it respectfully submitted that claim 1 is allowable over Holmberg.

Regarding claims 9-11, these claims recite subject matter related to claim 1. Thus, the arguments set forth above with respect to claim 1 are equally applicable to claims 9-11. Accordingly, is it respectfully submitted that claims 9-11 are allowable over Holmberg for the same reasons as set forth above with respect to claim 1.

In view of the foregoing, it is respectfully requested that the aforementioned anticipation rejection of claims 1 and 9-11 be withdrawn.

V. THE OBVIOUSNESS REJECTION OF CLAIM 2

On pages 5-6 of the Office Action, claim 2 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Holmberg (U.S. Patent No. 6,247,141). This rejection is hereby respectfully traversed.

Regarding claim 2, this claim is dependent upon independent claim 1. Thus, since independent claim 1 should be allowable as discussed above, claim 2 should also be allowable at least by virtue of its dependency on independent claim 1. Moreover, claim 2 recites additional features which are not disclosed, or even suggested, by the cited reference taken either alone or in combination.

At this point it should be noted that claims 12-20 have been added to cover additional novel features. Claims 12-20 are dependent upon independent claims 1 and 9-11. Thus, since independent claims 1 and 9-11 should be allowable as discussed above, claims 12-20 should also be allowable at least by virtue of their dependency on independent claims 1 and 9-11. Moreover, claims 12-20 recite additional features which are not disclosed, or even suggested, by the cited reference taken either alone or in combination.

In view of the foregoing, it is respectfully requested that the aforementioned obviousness rejection of claim 2 be withdrawn.

VI. CONCLUSION

In view of the foregoing, it is respectfully submitted that the present application is in condition for allowance, and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed telephone number, in order to expedite resolution of any issues and to expedite passage of the present application to issue, if any comments, questions, or suggestions arise in connection with the present application.

To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0206, and please credit any excess fees to the same deposit account.

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